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Japan - Commerce
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The Department refers to the Embassy's despatch 1180 of April 17, 1955 concerning the refusal of the Japanese Government to license the Midland National Life Insurance Company to do a life insurance business in Japan. The Department has been informed by the Department of Defense (a) that this company for several years has been included on the Defense Department list of insurance companies which are authorized to sell insurance to American service personnel on overseas bases; and (b) that the Defense Department has no derogatory information concerning the company. In addition the Department of Commerce has made inquiries regarding the operations and financial standing of Midland National Life Insurance Company and states that the Department of Commerce does not know of anything that reflects unfavorably upon the company.

The Department believes that the refusal of the Japanese Government to grant a license on the ~~same~~ ground that the Japanese Government believed no new companies were needed in Japan, would be a denial of the national treatment to which ^{an} ~~any~~ American insurance company is entitled under Article VII of the FCM Treaty. There is no indication that the Japanese Government is refusing to license new domestic life insurance companies on the ground the market is saturated and hence the Government's action would seem to be a clear case of discrimination. None of the exceptions to national treatment listed in the FCM Treaty are believed to apply in this case.

In view of the foregoing the Embassy, unless it perceives objections, is requested to discuss this matter with appropriate officials of the Foreign Office or other Japanese Ministries with a view to having the Japanese Government reconsider its refusal to grant a license to Midland National Life Insurance Company.

OSD/ISA-Col. Linn L/E-Mr. Crysak CPT-Mr. Setser TAD-Mr. Sullivan
Commerce-Mr. Sachs

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DEPARTMENT OF STATE A/CDC/MR	
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struction)

Compulsory Health Insurance Contributions by United States Citizens
in Japan.

The American Embassy, TOKYO.

Embassy's despatch No. 1386, June 4, 1959.

Embassy refers in despatch No. 1386 to the health insurance plan

the city of Hiroshima under authority of the Japanese National

Insurance Law, under which contributions are required of resident

U.S. citizens. The Embassy inquires as to the applicability to

of Article III of the Treaty of Friendship, Commerce and Navigation

1953.

Department agrees that the Hiroshima scheme, if it applies to

employment and relates directly to their employment, comes under paragraph

III. If it is broader in scope, it would appear to come under

IV, for it is a social insurance plan, contributions are compulsory,

and evidently are paid regardless of the financial means of the

Department's view the Mayor of Hiroshima and the Welfare Ministry

interpreted the national treatment provisions of Article III correctly.

of the national treatment rule is nondiscrimination; and while

inconvenience for United States citizens in the Hiroshima

there is no discrimination. United States citizens make the same

payments as Japanese nationals and are entitled to the same benefits.

The right to participate in the plan could be of positive benefit.

It states citizens less fortunately situated than those presently

enjoy coverage.

The Embassy

The Embassy raises the question of the relation to Article III of the most-favored-nation provisions of Article XI, paragraph 3. It is doubtful whether this is relevant. It may be questioned whether a contribution paid into the Hiroshima scheme is a tax within the meaning of Article XI(3). In most countries social insurance contributions are regarded as in the nature of premiums. In the United States, they are declared by law to be taxes, but this is for constitutional reasons deriving from a federal system of government. In fact, even if contributions to the Hiroshima plan were deemed to be taxes under Japanese law, there is serious doubt whether they should be regarded as taxes within the meaning of Article XI.

In effect, the United States citizens resident in Hiroshima are seeking a waiver of their treaty right to national treatment under Article III. This, however, is but one of several possible solutions mentioned in despatch No. 1386. One such solution, revision of the local law or regulations, might present difficulties. The other, creation of a voluntary private health insurance plan, apparently is open to objection mainly on grounds of inconvenience. The Department would be most reluctant to entertain the idea of action to obtain a waiver of this feature of the Japanese health insurance system for individual United States citizens even if no such alternatives were open. With a possible solution available that would not require direct action by the Japanese Government, an approach to that Government for a treaty waiver appears particularly undesirable and inopportune.

The treaty commitment of national treatment, applicable to a wide range of subject matter, is a valuable device for protection of the interests of United States citizens in Japan. Consequently, it is important to avoid any

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official actions or interpretations that might countenance the idea that this Government does not hold the national treatment principle in high regard. It further should be noted that Article III applies national treatment to a wide variety of programs of considerable interest to the individual, including workmen's compensation, old age and survivors insurance and unemployment benefits. In some countries compulsory programs of this kind, to which the alien is required to contribute, actually discriminate against him in the matter of benefits. Provisions such as Article III preclude such discrimination, and the prudence of permitting any government to gain the impression that, whatever the circumstances, the United States is disinterested in adhering strictly to the national treatment rule where the treatment of its citizens under treaty provisions on this subject matter is concerned seems open to serious question.

OF: CPT: CHSullivan:jlg 6/18/59

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SENT TO: Ambassador TOKYO PRIORITY 823

Erbtels 1026, 1280, 1296, 1307 and 1312.

1. Over past month Department has discussed AOC problem in separate meetings with various American oil companies concerned. In view differences in attitude among companies, has not rpt not been possible obtain QUOTE industry UNQUOTE position.

2. Department considers, however, that such action which clearly grants special favorable treatment to Japanese-owned supplier of foreign crude constitutes serious departure from normal trade principles and practices and violates general principle of non-discrimination. Department believes action such as that contemplated by GOJ would establish dangerous precedent which could have serious adverse effects on world trade in petroleum and other commodities and which would raise serious doubts as to future of Japan's trade policy, rendering more difficult Japan's efforts to receive from other countries non-discriminatory treatment for its exports. Contemplated GOJ handling AOC crude appears run counter expressed intention GOJ liberalize imports (including petroleum) and would appear make such eventual liberalization more difficult.

3. Of particular concern is fact that proposal contemplates treating oil

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oil produced in Persian Gulf by AOC as domestic oil, solely on basis it produced by Japanese company. This in contrast to general trade practices, including those relating other competing foreign oil produced same area. Japanese Government should realize serious implications of such a policy for trade in general and especially for a nation such as Japan which is dependent on trade.

4. Present Japanese foreign exchange reserves and fact that foreign exchange required by AOC to pay production expenses as well as royalties on concession does not rpt not appear support treatment AOC crude as QUOTE yen UNQUOTE oil. FYI. Consensus is among US companies that dollar content AOC crude unlikely be reduced below 60 percent even after initial development completed. End FYI.

5. Although Department notes proposal outlined Embtel 1307 indicates AOC crude price to be determined in QUOTE commercial negotiations UNQUOTE, fact that formula grants special treatment AOC crude has effect of removing it from effective competition with other imported crudes and reduces bargaining power importers. AOC development therefore based on investments made by established companies. Department understands certain refineries would require expensive modifications to process AOC crude. Thus established refineries required make additional investments which AOC would otherwise make as refiner and marketer under normal competitive conditions.

6. US would hope AOC oil would enter Japanese or other markets on competitive price basis under same system foreign exchange allocations as all imported oil and not rpt not as result preferential treatment.

7. FYI Standard New Jersey representatives on October 31 outlined plan they hoped would protect principle non-discrimination, but also presenting means accommodating AOC oil in Japanese market. They suggest that during 1961 and 1962

they

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They might off-take amount AOC production based their share Japanese market. This AOC crude handled as foreign exchange oil and would include no rpt no commitment to import and process in Japan although that most likely eventuality. Largest amounts taken would constitute absolute quantitative ceiling for 1963 and 1964, although it would be hoped this amount would decline and be eliminated as AOC expands output and marketing outlets during 4 year period. At end 1964 moral obligation ~~suspicious~~ accept AOC oil would be terminated. On basis foregoing Embassy may wish indicate to GOJ that we have reason believe discussions with various oil companies may lead to suggestions for handling AOC crude problem within framework non-discriminatory trade policy. End FYI.

8. Furthermore, in Department's view GOJ proposal to restrict yen sales crude to QUOTE exchange residents UNQUOTE appears to be inconsistent with the provisions of Articles XII 4 and XIV 5 of FCN Treaty. In Department's view if GOJ allows QUOTE exchange residents UNQUOTE sell foreign crude for yen it should also give US suppliers same national treatment.

9. Embassy requested make representations to GOJ along foregoing lines in appropriate written form.

10. Foregoing based on assumption that 1.) foreign exchange allocation \$175 million will not rpt not cover total Japanese crude requirements second half JFY 1960, 2) import licenses required for both QUOTE yen UNQUOTE and QUOTE foreign exchange UNQUOTE crude, and 3) amount of QUOTE yen UNQUOTE crude to be permitted unlimited (although difficult to see how import licenses could be issued on proportionate basis if total quantity not rpt not known).

11. Embassy's prompt and full coverage this complex matter is greatly appreciated.

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12. On November 2 Counsellor British Embassy called at Department to inform of UK approach to GOJ and express UK hope that US would make similar approach. He was informed Department intended instruct Embassy make similar approach soonest.

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